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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/726,385	12/02/2003	Vernon Russ Husk	P314620	5599

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EXAMINER	
ENGLE, PATRICIA LYNN	
ART UNIT	**PAPER NUMBER**
3612	

DATE MAILED: 04/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/726,385	HUSK, VERNON RUSS	
	Examiner	Art Unit	
	Patricia L Engle	3612	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *18 January 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,2,4-11 and 15-19* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,2,4-11 and 15-19* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *02 December 2003* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Carlson (US Patent 3,840,266).

Regarding claim 1, Carlson discloses a sealing member (8) adapted to be mounted in between a cab (2) and a canopy (4) where the cab (2) has a rear window (7) with ~~the~~ a perimeter sub-region (Fig. 2) and the canopy (4) has a forward window (column 1, lines 64-66) providing a perimeter sub-region where the perimeter sub-regions of the rear window (7) and the forward window are substantially aligned (column 1, lines 64-66), the sealing member (8) comprising: an elongate axis (inherent) and a first set of opposed elongated surfaces (14,15) comprising a first surface (14) and ~~the~~ a second surface (15) whereby the first and second surfaces (14,15) are adapted to engage the perimeter sub-regions of the rear window and the forward window (Fig. 3), the elongate member (8) further having a second set of opposed surfaces (16 and opposite surface in Fig. 3) comprising a third elongated surface (16) and a fourth surface (opposite 16 in Fig. 3) that are substantially opposed to one another and are adapted to engage the perimeter sub-region of the rear window and the perimeter sub-region of the forward window (they are capable of engaging the perimeter regions), where a sealing body width is defined between the first and second surfaces that is a greater distance than a sealing body thickness that is defined as the

distance between the third and fourth surfaces, whereas the elongate member (8) is adapted to rotate substantially about its central elongate axis to provide engagement with the first and second opposed surfaces to the perimeter sub-regions of the rear window and the forward window or to provide engagement of the third and fourth opposed surfaces to the perimeter sub-regions of the rear window and the forward window (the elongate member 8 is capable of being rotated about its axis since it "is made from a flexible or elastic and compressible material"- column 2, lines 16-17).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 2-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carlson in view of Applicant's admission as to the properties of DURAFOAM™ (http://www.rubberplastics.com/products.htm copyright 2001).

Regarding claim 2, Carlson discloses an elongate member (8) having a longitudinally extending axis adapted to be mounted between a cab (2) ~~having a longitudinally extending axis~~ and a canopy (4) where the cab (2) has a rearward window (7) with a perimeter sub-region (Fig. 2) and the canopy (4) has a forward window (column 1, lines 64-66) having a perimeter sub-region where the rearward and forward windows have a first lateral perimeter region (11), a second lateral perimeter region (11), an upper perimeter region (9) and a lower perimeter region

(10) ~~and upper perimeter region~~, the elongate member (8) having the properties: made from flexible material (column 2, lines 16-17). Regarding claim 4, Carlson discloses an elongate member where the first and second lateral perimeter regions (11) have a lateral longitudinal distance between the rearward perimeter region and the forward perimeter region and the upper perimeter region (9) has a lateral longitudinal distance between the rearward perimeter region and the forward perimeter region whereby the lateral longitudinal distance is not the same as the upper longitudinal distance (column 8, line 10-16) whereby the elongate member is adapted to rotate about the central elongate axis whereby the first and second surfaces are adapted to engage the first and second lateral perimeter regions and the third and fourth surfaces are adapted to engage the upper perimeter region (the elongate member of Carlson is capable of being rotated along its axis so that different surfaces contact the cab and the canopy perimeter surfaces). Regarding claim 5, Carlson discloses the elongated member whereby the lower perimeter region (10) has a longitudinal distance between the rearward perimeter region and the forward perimeter region and the third and fourth surfaces (16) of the sealing member are adapted to engage the lower perimeter region (the third and fourth surfaces are capable of engaging the lower perimeter).

Carlson does not disclose that the flexible material is adapted to compress at a first rate and expand to an original cross sectional size at a second rate which is slower than said first rate whereby the elongate member is adapted to compress and frictionally engage between the first lateral perimeter region, the upper perimeter region, the second lateral perimeter region in the lower perimeter region and after said engagement the material has compression memory where the expansion rate is further impeded and the pressure upon the first lateral perimeter region, the

second lateral perimeter region, the upper perimeter region and the lower perimeter region and upper perimeter region is low.

The Applicant states that DURAFOAM™ meets these limitations on page 11. The web page cited states that DURAFOAM™ is for sale by Monmouth and the web page was copyrighted in 2001.

It would have been obvious to one of ordinary skill in the art to use DURAFOAM™ as the "compressible material such as foam rubber or foam plastic" (Carlson- column 2, lines 16-17). The motivation would have been to use a foam plastic with shock absorption qualities and which is a hot and cold insulator (DURAFOAM™ web page).

Regarding claim 6, Carlson discloses the elongated member where the sealing member (8) has a first end and a second end whereby the first and second ends are adapted to engage one another in a face-to-face engagement in between the rearward perimeter region and the forward perimeter region. Column 2, lines 7-9 of Carlson states "the elastic seal of this invention comprises a sealing body 8 formed to provide an elongated closed loop". This statement indicates that the sealing body 8 is an elongated member with two ends which engage one another in face to face engagement. However, if that is not what Carlson was implying then it would have been obvious to one of ordinary skill in the art to form the closed loop by taking an elongated member and having the two ends engage in face to face engagement. The motivation would have been to make manufacturing of the seal simple.

Regarding claims 7 and 8, the location of the sealing member would have been an obvious design choice. The motivation for choosing the moveable window portion would have been to reduce the material needed to provide a seal. The motivation for choosing the fixed

window portion would have been to reduce the amount of material needed for the seal and to allow the window to be open or closed while the canopy is mounted on the vehicle.

Regarding claim 9. Carlson as modified discloses the product of the elongated seal as discussed with regard to claim 2. Carlson does not disclose that the seal is placed in the gap in both orientations. However, the seal of Carlson is capable of being placed at any orientation. The motivation for having surface 16 and it opposing surface engage the cab and canopy would be that the gap between the cab and the canopy is so narrow that a wide seal is not needed.

Regarding claim 10, Carlson as modified discloses the elongate member for filling a gap between a cab and a canopy as discussed in claim 2 above. Carlson also discloses that the elongate member is held in the gap by an expansion force and a frictional force. Although Carlson discloses adhesive tape to mount the sealing member, the adhesive force is used to align the seal with the cab and the canopy. After the seal is aligned the canopy is moved forward to compress the seal. Therefore the adhesive tape is only acting as another moisture blocker at that point and there is a vertical friction force holding the seal in place.

Regarding claim 11, the Applicant's admit that DURAFOAM™ meets the limitation of claim 11. It would have been obvious to one of ordinary skill in the art to use DURAFOAM™ as the "compressible material such as foam rubber or foam plastic" (Carlson- column 2, lines 16-17). The motivation would have been to use a foam plastic with shock absorption qualities and which is a hot and cold insulator (DURAFOAM™ web page).

Regarding claims 14, the cross sectional shape of the elongated member would be a matter of design choice. Seals are known to be oval, round, square and rectangular. The seal

would be compressible to engage both the cab and the canopy with an oval, round or square cross section.

Regarding claim 15, Carlson as modified discloses the elongated member as disclosed in claim 10 above. Carlson does not disclose that the seal is rotated so that one set of surfaces engage the cab and canopy at one gap width and the other set of surfaces engage the cab and canopy at another gap width. However, the seal of Carlson is capable of being rotated so that the different surfaces engage the cab and canopy at different gap widths. The motivation for rotating the elongated member would be that to have a similar compression force on the seal.

Regarding claim 16, Carlson as modified discloses the method as recited in claim 15 whereby the vehicle back cab has a painted surface (inherent to a pickup truck with a removable canopy).

Regarding claim 17, the Applicant's admit that DURAFOAM™ meets the limitation of claim 17. It would have been obvious to one of ordinary skill in the art to use DURAFOAM™ as the "compressible material such as foam rubber or foam plastic" (Carlson- column 2, lines 16-17). The motivation would have been to use a foam plastic with shock absorption qualities and which is a hot and cold insulator (DURAFOAM™ web page).

Regarding claim 18, Carlson as modified disclose the method as recited in the claim 15 whereby the sealing body (8) is adapted to extend into cavity regions of the perimeter portion of the window frame and frictionally engage therein (column 3, lines 1-3 and lines 9-16).

Regarding claim 19, Carlson as modified disclose the method as recited in the claim 15 above whereby the sealing body (8) is adapted to extend into the cavity regions of a perimeter

portion of a window frame and provide a circuitous route for dust and debris demand to break the seal between the cab region and the surrounding environment (column 3, lines 1-16).

Response to Arguments

5. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., that the seal is rotated such that the first and second surfaces abut one perimeter sub-region while the third and fourth surfaces abut another perimeter sub-region) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

The Applicant argues that it would not have been obvious to rotate the seal because of the protective tape. However, it would have been obvious to use either the first and second surface or the third and fourth surfaces while attaching the tape to either the third/fourth or the first/second surfaces respectively.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patricia L Engle whose telephone number is (703) 306-5777. The examiner can normally be reached on Monday - Friday from 8:00 to 4:30. After April 5, 2005 the Examiner can be reached at 571-272-6660.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, D. Glenn Dayoan can be reached on (703) 308-3102. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Patricia L Engle
Primary Examiner
Art Unit 3612

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March 18, 2005